**THE HON'BLE SMT. JUSTICE T. MEENA KUMARI**
**AND**
**THE HON'BLE SRI JUSTICE G. CHANDRAIAH**

**WRIT PETITION No.20659 of 2004**

**Date 15-6-2007**

**Between:**
**Commandant,**
**XI APPSP (IR) Battallion,**
**Kadapa and others.**

**.....PETITIONERS**

**AND**

**N. Dilip Kumar**

**.....RESPONDENT**

**THE HON'BLE SMT. JUSTICE T. MEENA KUMARI**
**AND**
**THE HON'BLE SRI JUSTICE G. CHANDRAIAH**

**WRIT PETITION No.20659 of 2004**

ORDER: (per Smt. T. Meena Kumari,J)

The Department filed the present writ petition seeking a Writ of Certiorari to call for the records relating to the judgment in O.A. No.2349 of 2002, dated 12.6.2002 on the file of the A.P. Administrative Tribunal, Hyderabad and to quash the same.

The respondent herein was working as Constable in XI Battalion, APSP, Kadapa. He was attached to A Coy posted at Veeraballi P.S. Kadapa District for Ant-Naxal duties. While so, on 30.9.2000 at about 17.30 hours, the respondent went away from the post without the knowledge of the in-charge Post Commander, consumed liquor and misbehaved with one Smt. C. Parvathi, W/o. C. Ramana Reddy with mala fide intention to outrage her modesty while she was sweeping in front of her house. Therefore, a charge sheet was issued framing the following charges:

1. P.C. 268, N. Dilip Kumar, who was attached to Veeraballi P.S. for A.N.S. duties had consumed alcohol and misbehaved with Smt. C. Parvathi, W/o. Ramana Reddy with a mala-fide intention on 30.9.2000 at 5.30 P.M.
2. P.C. 268, N. Dilip Kumar has thus exhibited lack of integrity and conduct unbecoming of Government servant and violated Rule 3 of A.P.C.S. (Conduct) Rules, 1964.

Thereafter, an enquiry officer was appointed to conduct enquiry

in the matter and the enquiry Officer after conducting the enquiry, submitted his report holding the charge levelled against the respondent as proved. Basing on the report of the enquiry officer, the Department passed order on 27.12.2001 dismissing the respondent from service. Aggrieved by the same, the respondent filed O.A. No. 2349 of 2002 before the A.P. Administrative Tribunal.

The respondent contended before the Tribunal stating that there is no material whatsoever to hold that he misbehaved with Smt. C. Parvathamma in intoxicated condition. Therefore, the very finding of the enquiry officer that he misbehaved with her is absolutely perverse.

The Tribunal having heard the learned counsel for the parties and having perused the material on record, by the order impugned in this writ petition, found that there was absolutely no evidence against the respondent to show that he misbehaved with Smt. Parvatamma and on that ground, it allowed the O.A. and directed the Department to reinstate the respondent into service with all consequential benefits. Aggrieved by the same, the Department filed the present writ petition.

Sri J. Sudhir, learned Government Pleader appearing on behalf of the Department would contend that the respondent has indulged himself in a gross misconduct by misbehaving with a lady while working in a disciplined force like Police. He would further contend that if the respondent is let loose, he may again indulge in such kind of activities and there would be loss of credibility of police force in the eye of general public. He, therefore, submits that the Tribunal ought not to have ordered for reinstatement of the respondent.

Learned counsel appearing on behalf of the respondent-delinquent submitted that the Tribunal has clearly held that the charge levelled against him has not been held proved and rightly ordered for reinstatement. In the circumstances, the order of the Tribunal is quite legal and justified and it does not require any interference at the hands of this Court.

We have heard the learned counsel for the parties and perused

the impugned award and other material made available on record.

The substantial charge against the respondent who was attached to Veeraballi P.S. for A.N.S. duties was that on 30.9.2000 at about 5.30 p.m. he had consumed alcohol and misbehaved with a lady, which amounts to misconduct. Thereafter, enquiry officer was appointed to conduct enquiry in the matter. The Enquiry Officer having examined P.Ws. 1 to 5 and also the documentary evidence on record , held the charge as proved.

So far as the contention of the delinquent that the RSI did not send him for medical examination immediately after the incident is concerned, the enquiry officer clearly stated in his report that since there was no bus facility at night from Veerabally village, the respondent was sent for medical examination on the next day and the same cannot be found fault with. He further held that since the respondent was examined by the medical Officer nearly after a period of 16 hours after the incident, the medical officer could not have found any traces of alcohol in the body of the respondent. Further the enquiry officer also rejected the contention of the respondent that the victim had failed to identify him. The Enquiry Officer having held that the charge levelled against the respondent as proved, submitted his report. Basing on the said report, the disciplinary authority having complied with all the formalities and having concurred with the view taken by the Enquiry Officer, passed final order on 27.12.2001 dismissing the respondent from service. In this background of the matter, the contention of the learned counsel for the respondent that the Department has not conducted the enquiry in a free and fair manner holds no water.

The Enquiry Report makes it clear that the charge against the accused is proved. Before going into the merits of the case, it is pertinent to note that the charge is serious in nature, but, at the same time, much gravity cannot be attached to the alleged charge to impose

such a serious punishment. Therefore, in the present facts and circumstances of the case and in view of the solitary testimony of the alleged victim as to the alleged charge, we feel that the punishment imposed by the disciplinary authority basing on the enquiry report is disproportionate and is an arbitrary one. However, the Tribunal is not justified in ordering reinstatement of the respondent into service with all consequential benefits.

But, considering the peculiar circumstances of the case and the nature of the charge, we feel it a fit case wherein the order of the Tribunal ordering reinstatement of the petitioner into service with all consequential benefits can be modified to that of reinstatement into service afresh without any consequential benefits, i.e., continuity of service and arrears of salary. However, the authorities shall shift the respondent to a far off place in the interest of justice and in the interest of the alleged victim.

The writ petition is accordingly allowed in part. No order as to costs.

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T. MEENA KUMARI,J

DATE: 15th June, 2007

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G. CHANDRAIAH,J

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